

Persons that are engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. See the Department's regulation entitled "Vendors of Meals" at 86 Ill. Adm. Code 130.2145. (This is a GIL.)

September 19, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 16, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I had the question regarding the sales and use tax on the Banquet Room Rental, Please let me know so that I can pay the right tax amount and collect the same form [sic] my guest.

My business is located in the CITY in the State of Illinois. We charge our guest the [sic] as follows:

Banquet Room Rental
Food & Beverage
Audio Visual
Gratuity (Paid to Employee)
Bartender Fee (Paid to Employee_

Please let us know which of the above are taxable amount [sic]. Some guest [sic] dispute that Room Rental is not taxable even when they have Food & Beverage being served.

Please mail the information to the address below.

DEPARTMENT'S RESPONSE

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax or Use Tax applies.

For general information regarding vendors of meals, we refer you to the Department's regulation "Vendors of Meals" at 86 Ill. Adm. Code 130.2145. This regulation is currently being reviewed to add clarification regarding these issues.

Caterers are considered to be retailers of tangible personal property. As a result, tax is imposed on their entire gross receipts from sale, without any deduction on account of service costs or other overhead costs. A caterer's gross receipts would include all receipts associated with his sale of food. It is immaterial that service costs associated with the meal are billed separately on the invoice.

As a result, when a caterer contracts to provide food or beverages to a customer, his gross receipts will include room charges, corkage fees, cancellation fees, fees for special linens, chairs and tables, and chairs, dishes, glasses and flowers. Each of these charges is a part of his overall cost of doing business, and such costs are always includable in his gross receipts. See the Department's regulation "Cost of Doing Business Not Deductible" at 86 Ill. Adm. Code 130.410.

We do not believe that the provision (or procurement) of security services, valet services, coat check services, entertainment services and audio-visual equipment by a caterer is part of his cost of providing meals. As a result, these costs are not includable in the caterer's gross receipts if they are separately itemized on the invoice and the customer initials such itemized charges.

Even if they are separately stated, charges for room rentals are subject to tax.

The proceeds of mandatory service charges separately stated on customers' bills for the purchase and consumption of food and beverages purchased at retail from a retailer are exempt from tax to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed. This procedure is required by 35 ILCS 120/2-5(15). Specifically, Section 130.2145(d) states as follows:

"Mandatory gratuities are not included in the taxable receipts of persons operating restaurants, hotels and other places of business which come within the Act, if such mandatory gratuity is added to banquet or dinner checks in the form of a percentage of the total bill, or as a flat rate, to the extent that the proceeds of the service charge are in fact turned over as tips or as a substitute for tips to the employees who participate directly in preparing, serving, hosting or cleaning up the food or beverage function with respect to which the service charge is imposed. (Section 2-5(15) of the Act) If any part of the service charges are used to fund or pay wages, labor costs, employee benefits or employer costs of doing business, that part of the service charge is includable in gross receipts.

Therefore if the employer separately states the mandatory gratuity charge, and if the entire gratuity is distributed to the servers or other employees who participated directly in serving, preparing, hosting, or cleaning up the food or beverage function with respect to which the mandatory gratuity is charged, the gratuity is not subject to Retailers' Occupation Tax. However, if the employer retains and uses the entire mandatory service charge for any other use, including paying employee wages, the mandatory gratuity/service charge is subject to tax.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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